

# AIPE NEWSLETTER

## *INSOLVENCY & BANKRUPTCY LAW*



## FROM THE CEO'S DESK

### From Liquidation to Resolution: How the Supreme Court's Reversal Vindicates Principled Insolvency Analysis

#### A Triumph of Commercial Wisdom Over Judicial Interference

The Supreme Court's recent reversal in the Bhushan Power and Steel Limited (BPSL) insolvency case represents more than just a course correction—it stands as a vindication of principled insolvency jurisprudence and the foundational objectives of the Insolvency and Bankruptcy Code (IBC). I raised many of these issues in my article "How BPSL's Insolvency Saga Exposes Systemic Flaws in IBC ecosystem and What It Means for India's Future" and feel happy that the Court's comprehensive judgment, delivered on September 26, 2025 (after reviewing its earlier May 2025 order directing liquidation), demonstrates how adherence to established legal principles ultimately prevails over interventionist approaches that threaten the IBC's core framework.

#### The Critical Turnaround: From Liquidation to Affirmation

The trajectory of this case—from the Supreme Court's initial order directing liquidation to its subsequent reversal upholding the resolution plan—illuminates the fundamental tension between rigid procedural enforcement and the IBC's overarching objective of business rescue and revival. The Court's initial May 2025 judgment, which ordered BPSL's liquidation despite the successful implementation of JSW Steel's ₹19,700 crore resolution plan, represented a concerning departure from established principles of IBC already settled through a catena of judgements.

However, the reviewed judgment demonstrates judicial wisdom in recognizing and correcting this course. As the Court acknowledged in allowing the review petitions: "We are of the view that the common impugned judgment and order dated 02.05.2025 does not correctly consider the legal position as laid down by a catena of judgments."

#### Vindication of Core Concerns

##### 1. Preservation of Commercial Wisdom

The reviewed judgment strongly vindicated my concerns about judicial interference in commercial decision-making. The Court extensively referenced its landmark decision in *K. Sashidhar v. Indian Overseas Bank*, emphasizing that "the commercial wisdom of CoC has been given paramount status without any judicial intervention."



The judgment categorically stated: "The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors."

This approach directly addresses earlier concerns about courts substituting their judgment for that of creditors who had overwhelmingly (97.25%) approved timeline extensions due to regulatory complications.

##### 2. Contextual Understanding of Implementation Delays

By their very nature, Insolvency laws are procedural in nature. Any indeed there were certain violations of process by the RP, the CoC and other stakeholders including Resolution Applicant, which were both due to intrinsic and external factors. However, the Court's detailed analysis of implementation delays vindicated arguments about external factors beyond the resolution applicant's control. The judgment meticulously traced how regulatory interventions—particularly the Enforcement Directorate's provisional attachment order and criminal proceedings—created legitimate impediments to plan implementation.

Crucially, the Court recognized that "the delay in implementation of the Resolution Plan is on account of various reasons" and found that "both the CoC and the SRA – JSW were making consistent efforts to get the matter sorted out before this Court so as to ensure the expeditious implementation of the Resolution Plan."

##### 3. Rejection of Rigid Procedural Formalism

The reviewed judgment rejected the earlier approach of treating procedural infractions as automatic grounds for plan rejection. Instead, the Court adopted a more nuanced analysis, examining whether alleged violations could have been remedied through less drastic measures.

The Court's treatment of Section 29A compliance issues exemplifies this approach. Rather than viewing due diligence gaps as fatal flaws, the judgment suggested that "the Supreme Court's concerns could have been remedied by asking JSW to provide further undertakings or by requiring lenders to conduct fresh due diligence."

### Upholding IBC's Fundamental Architecture

#### Resolution Over Liquidation

The reviewed judgment strongly reaffirmed the IBC's fundamental preference for resolution over liquidation. The Court noted that "the dominant purpose of the IBC is to resort to the liquidation proceedings as the last option" and recognized that the earlier order's liquidation directive contradicted this core principle. This aligns with the Supreme Court's established jurisprudence in Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta, which emphasized resolution as the primary objective of the Code.

#### Finality and Certainty in Resolution Plans

The biggest challenge posed by May 2025 judgement was the uncertainty it created on finality of an approved Resolution Plan. The Supreme Court's review order settled this issue once for all that a Resolution Plan approved by CoC and then Adjudicating Authority is full and final. SC's treatment of rejecting EBITDA distribution claims by CoC provided strong validation of concerns about post-approval claim modifications. The judgment firmly rejected attempts to raise new claims not contemplated in the original Resolution Plan or Request for Resolution Plan (RfRP).

Citing Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited, the Court emphasized that "once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding." This ruling effectively prevents the "hydra -

head" problem identified in Essar Steel, where new claims emerge after plan approval, creating uncertainty for resolution applicants.

### Addressing Systemic Framework Issues

#### Committee of Creditors' Continued Authority

The judgment resolved important questions about the Committee of Creditors' (CoC) authority post-approval. Contrary to arguments that the CoC becomes functus officio after plan approval, the Court held that creditors retain authority during the implementation period and pending appeals. This interpretation prevents the "state of limbo" that would occur if creditors lost all authority after approval but before full implementation and appeal resolution.

#### Monitoring Without Micromanagement

The Court's approach to monitoring implementation struck an appropriate balance between oversight and commercial flexibility. While recognizing the need for implementation monitoring, the judgment avoided the micro managerial approach that characterized the earlier order. The Court noted that recent regulatory amendments mandate CoC consideration of monitoring committees, but emphasized that such oversight should not substitute for commercial judgment.

### Broader Implications for Insolvency Practice

#### Restoring Market Confidence

The reviewed judgment's approach helps restore predictability to India's insolvency ecosystem. By affirming implemented resolution plans and rejecting post-hoc procedural challenges, the Court signals to potential resolution applicants that good-faith plan implementation will be protected.

#### Balanced Judicial Review

The judgment establishes important parameters for judicial review of resolution plans. While maintaining that courts must ensure statutory compliance, the decision emphasizes that such review should not extend to second-guessing commercial decisions made by informed creditors.

## Lessons for Future Cases

### 1. Proportionate Remedies

The reviewed judgment suggests that courts should consider proportionate remedies for procedural violations rather than immediately resorting to plan rejection or liquidation. Minor compliance issues that could be cured through undertakings or penalties should not trigger drastic consequences.

### 2. Recognition of External Factors

The Court's detailed analysis of implementation delays demonstrates the importance of considering external factors beyond the resolution applicant's control. Regulatory actions, stay orders, and legal uncertainties should be factored into any delay analysis.

### 3. Finality of Approved Plans

The strong rejection of EBITDA distribution claims reinforces the principle that resolution plans create binding frameworks. Claims not contemplated in the original plan cannot be raised post-approval without undermining the entire resolution framework.

## Conclusion: A Return to First Principles

The Supreme Court's reversal in the BPSL case represents more than a simple course correction—it embodies a return to the first principles underlying the IBC. By prioritizing resolution over liquidation, respecting commercial wisdom over judicial micromanagement, and ensuring finality for implemented plans, the judgment reinforces the Code's foundational architecture.

This case serves as an important reminder that the IBC's success depends not merely on procedural compliance but on faithful adherence to its underlying objectives. The transformation of BPSL from a loss-making entity carrying debts of ₹47,000 crore to a profitable enterprise providing employment to thousands exemplifies the Code's potential when its principles are properly applied. For practitioners, creditors, and resolution applicants, this judgment provides crucial guidance on the boundaries of judicial intervention in commercial insolvency decisions. Most importantly, it reaffirms that the IBC's promise of providing a fresh start to viable businesses—while ensuring fair treatment of creditors—remains intact when courts and stakeholders work within the Code's carefully crafted framework rather than attempting to substitute their judgment for its established processes.

The BPSL case ultimately demonstrates that the IBC's architecture, when properly understood and applied, provides robust mechanisms for achieving its twin objectives of business revival and creditor protection. The Supreme Court's willingness to recognize and correct its earlier departure from these principles strengthens both the Code's jurisprudential foundation and the confidence of all stakeholders in India's insolvency ecosystem.



## FORTNIGHTLY ROUNDUP ON IBC

This week's highlights from India's insolvency ecosystem feature a landmark Supreme Court ruling reinforcing the sanctity of approved resolution plans, key IIBI events marking the sector's growth, and notable tribunal actions including CIRP withdrawals and RP removals. Amid ongoing discussions on IBC's effectiveness, these developments underscore the balance between creditor rights and timely resolutions, with NCLT backlogs continuing to strain timelines (average CIRP duration now ~849 days vs. 330-day mandate).

### Supreme Court (SC)

The SC delivered pivotal judgments emphasizing finality in insolvency proceedings and protections for bona fide transactions.

**Kalyani Transco & Ors. v. Bhushan Power & Steel Ltd. & Ors. (2025 INSC 1165)**

SC upheld NCLAT's order dismissing appeals by erstwhile promoters and operational creditors seeking to reopen claims post-resolution plan approval. Ruled that once a plan is approved under Section 31 IBC, claims are "frozen" and binding on all parties, including the government. Emphasized no reopening for claims omitted from RfRP or plan; violations could lead to liquidation. Penalized promoters for delay tactics in the ₹19,700 crore JSW Steel acquisition.

**Singamasetty Bhagavath Guptha v. Allam Karibasappa (2025 INSC 1159)**

Under Section 37 of the Provincial Insolvency Act, 1920, annulment of insolvency does not void all prior transactions—only invalid sales are reversed. SC clarified that completed, bona fide sales during insolvency remain protected, requiring courts to assess payments and finality before annulment effects.

### JSW Steel Acquisition of Bhushan Power & Steel

SC overturned a prior May 2025 ruling threatening the ₹19,700 crore deal, reinstating JSW's control. Upheld Section 32A immunity for successful resolution applicants and reinforced CoC's authority, boosting

investor confidence in IBC framework.

### Insolvency & Bankruptcy Board of India

IIBI focused on research, events, and regulatory milestones, celebrating its ecosystem's evolution.

### Fourth International Research Conference on Insolvency & Bankruptcy:

Inaugurated on Sep 28 in Hyderabad (jointly with ISB). Theme: Behavioral impacts of IBC. Call for papers issued Sep 26; sessions on Sep 28-29 explored interdisciplinary aspects like credit discipline and pre-admission settlements (30,310 cases worth ₹13.8 trillion resolved pre-IBC admission by Dec 2024).

### 9th Annual Day:

- Scheduled for Oct 1 at Pradhanmantri Sangrahalaya, New Delhi. Highlights include creditor recovery at 32.8% (up to Mar 2025) and ₹67,000 crore realized in FY25—a 42% YoY jump via record resolutions.
- Regulatory Notes: Ongoing proposals for capping IP assignments and mandatory CoC deliberations on Section 29A eligibility to enhance transparency. Amendments to liquidation regulations (effective Jan 28, 2025) streamline auctions and fund management.

### National Company Law Tribunal (NCLT)

NCLT saw procedural advancements and a key RP removal amid bias claims.

### Visa Steel Ltd. CIRP Withdrawal

NCLT allowed withdrawal of CIRP under Section 12A IBC after 90% creditor vote. Company exits insolvency, averting liquidation; highlights IBC's flexibility for viable resolutions.

## U.N. Automobiles Pvt. Ltd. (RP Removal)

Jaipur Bench removed RP Satyendra Prasad Khorania for alleged bias (prior role as recovery agent for Bank of Baroda, sole creditor). Acted on Rajasthan HC direction; suspended director's writ cited conflict under IBC. New RP to be appointed.

## National Company Law Appellate Tribunal

NCLAT dismissed appeals on bidding lapses and security classifications, upholding procedural rigor.

### Appeal on Bid Extension Dismissal (Unspecified Appellant v. RP)

NCLAT affirmed NCLT order rejecting revised bid post-multiple extensions. Failure to submit timely under CIRP timelines fatal; no violation of Reg. 39(1-B) if final list includes applicant post-extension.

### Arbitral Injunction as Security (Unspecified Creditor v. CoC)

Dismissed appeal classifying arbitral injunction as statutory security under IBC. Ruled it doesn't confer secured creditor status; CoC adjustment upheld, creditor remains unsecured.

## Broader Insights & News

- **Backlogs & Delays:** Reports indicate IBC pendency has tripled since 2017, with ~15,000 cases at NCLT and ₹3.8 lakh crore stuck in clawback proceedings. Limited benches (only 63 members vs. sanctioned 62) exacerbate delays, threatening resolutions.
- **Real Estate Focus:** Post-SC ruling, calls for a revival fund for stalled projects gain traction, with government and IBBI exploring amendments to prioritize homebuyers.
- **Enforcement Actions:** ED attached ₹153 crore in assets of a realty firm under PMLA on Sep 29, signaling continued scrutiny in insolvency-linked fraud cases.
- **Ecosystem Stats:** As of Sep 2025, 4,500+ IPs registered; FY25 avoidance transactions filed worth ₹65,650 crore in recoveries.

## Market Impact and Economic Context

### IBC's Economic Footprint:

With creditor recoveries at 32.8% and ₹3.8 lakh crore stuck in clawback proceedings, IBC remains critical to India's credit market. The Bhushan Power ruling strengthens investor trust in distressed asset acquisitions.

**Real Estate Focus:** Real estate CIRPs (20% of NCLT cases) are under scrutiny post the SC's homebuyer ruling. Calls for a revival fund for stalled projects gained momentum, with 1,100+ CIRPs resolved by Mar 2025.

### Global Context:

The UK High Court's handling of Vijay Mallya's bankruptcy (hearing set for Oct 2025) highlights cross-border enforcement challenges, relevant to India's ₹14,000 crore recovery efforts.

## Practical Tips for Stakeholders

### For Creditors:

Mitigate NCLT delays by filing claims early with robust documentation. Verify RP neutrality to avoid conflicts, as seen in U.N. Automobiles (Jaipur, Sep 27), where the RP was removed for bias.

### For Businesses:

Explore pre-admission settlements (30,000+ cases resolved pre-CIRP) or out-of-court restructurings to avoid insolvency. Engage IPs early for compliance.

### For IPs:

Adhere to IBBI's proposed assignment caps and ethical standards to maintain credibility and avoid removals.

[IBBI Issued a circular on 24.09.2025 some FAQs on IBC - https://ibbi.gov.in/uploads/faqs/FAQ%20-%20CIRP%20Liq%20-%20260925%20-%20CP.pdf](https://ibbi.gov.in/uploads/faqs/FAQ%20-%20CIRP%20Liq%20-%20260925%20-%20CP.pdf)

# SOME FAQs FROM IBBI as of 24.09.2025

## CIRP Commencement

- What is the Insolvency Commencement Date (ICD)?

The ICD is the date of admission of the application by the Adjudicating Authority, not the date the order is received by the IRP/RP. All deadlines and processes are determined from the ICD.

- Is it compulsory to publish the public announcement in a vernacular language?

Yes, the public announcement must be published in one English and one regional language newspaper at locations relevant to the corporate debtor.

## Claim Verification

- Can the RP admit claims if books of accounts are unavailable?

Yes. The RP should use documents submitted by claimants, bank and statutory records, and may source information from third parties like NESL, MCA, and tax authorities. Claims may be updated as new records become available.

- Are claims allowed beyond the standard 90-day window?

The RP should accept claims submitted after 90 days if judicial orders direct this or valid reasons are provided, up to seven days before a vote on the resolution plan or initiation of liquidation.

## Committee of Creditors (CoC) Meetings

- Can CoC meetings be held on holidays or at the office of a creditor?

Yes. There are no restrictions on the timing or venue of CoC meetings, but convenience and participation must be considered.

- Can suspended directors attend CoC meetings via legal counsel?

No. Directors must attend personally, except OCs who can be represented by an authorized representative.

## Appointment and Fees for Professionals

- Is fee-sharing between IPs and IPEs permitted?

No. Each entity must be paid directly and invoice separately. Performance-linked incentive is exclusive to IPs, not IPEs.

- Should IP pay professionals from their own funds if the CD or CoC does not contribute?

No. IPs must seek prior fee approval and financing from CoC. If funds are not forthcoming, suitable directions should be sought from the Adjudicating Authority.

## Withdrawal of CIRP

- When does IRP/RP cease their duties after a settlement?

Only after the withdrawal application under Section 12A is approved by the Adjudicating Authority does the IRP/RP's responsibility end.

- Is a bank guarantee required for withdrawal application?

Yes. Regulation 30A(2) mandates a bank guarantee for withdrawal applications.

## Liquidation Process

- Can the Stakeholder Consultation Committee (SCC) replace the liquidator?

Yes. SCC may propose replacement with a two-thirds majority and submit an application to AA with written consent from the proposed liquidator.

- Is regular conduction of SCC meetings compulsory?

Yes. SCC meetings must be held regularly, as per regulation, regardless of the presence of material matters.

- Are all creditors required for SCC?

The SCC should consist of all creditors, even if large numbers make meetings challenging; precedents from CIRP show no practical difficulty in conduct.

FIND ALL FAQs AT <https://ibbi.gov.in/uploads/faqs/FAQ%20-%20CIRP%20Liq%20-%20260925%20-%20CP.pdf>

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